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IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

Attorney Docket : 137808-US-NP
Application No.: 10/773,226
Filing Date: February 9, 2004
Patent No.: 7,590,055
Issue Date: September 15, 2009
First Named Inventor : Jonathan Dean Segel
Title: High availability broadband connections through switching from
wireline to diverse wireless network

COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

SIR:

**Reply To Decision Dismissing
Request for Recalculation of PTA In View of Wyeth**

In reply to the Decision dismissing the patentee's Request for Recalculation of Patent Term Adjustment (PTA) in View of Wyeth (herein REQUEST) for the above- identified patent, patentee submits that the dismissal for ineligibility is improper.

Due to an apparent discrepancy in the data utilized by the Patent and Trademark Office (PTO) in considering the eligibility of the REQUEST, the PTO apparently deemed the REQUEST ineligible under reason E) identified in the Decision. Under reason E), a request for PTA recalculation is deemed ineligible when it is filed more than one-hundred-eighty (180) days after the grant date of the patent and is not filed within two months of a dismissal of a request for reconsideration of the patent term under 37 CFR 1.704(d).

However, patentee's REQUEST was timely filed within the applicable time frame/s. Thus, the dismissal is improper.

The grant date of the above identified patent is September 15, 2009.

Accordingly, a timely REQUEST may be filed within one-hundred-eighty days from that grant date, the last day for filing the REQUEST being Sunday March, 14, 2010.

Since the day, or the last day, for taking any action with respect to the filing of the REQUEST in the PTO falls on Saturday, Sunday, or a Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding secular or business day. 35 USC 21.

As per 35 USC 21, patentee filed the REQUEST on March 15, 2010.

Indeed, the date information on the imaged file history on PTO PAIR indicates that the REQUEST was received by the PTO on March 15, 2010.

In addition, the REQUEST (attached download from PTO PAIR) is stamped as being received by the PTO Central Fax Center on March 15, 2010

Thus, the REQUEST was timely filed.

Unfortunately, in rendering its decision on the ineligibility of the REQUEST, the PTO has apparently relied on faulty data contained in the Transaction History record of PTO PAIR. The transaction history data (attached) for the above-identified patent indicates that a petition was entered on March 18, 2010. Were the REQUEST to have been filed on March 18, 2010, the REQUEST would have been ineligible for being untimely. It appears that the PTO relied on this erroneous data in making the Decision. Thus, the Decision dismissing the REQUEST is improper.

Patentee thus requests reconsideration of the Decision dismissing the REQUEST and again requests recalculation of the PTA under 35 USC 154(b) indicated on the above-identified patent. The patentee's sole basis for requesting the recalculation is the USPTO's Pre-Wyeth interpretation of 35 USC 154(b)(2)(a).

The improper Decision dismissing patentee's REQUEST is dated April 21, 2010. This reply is filed within one month or thirty days, whichever is longer, of the mail date of the Decision, and therefore is timely.

Respectfully submitted,

By


John Grancheth

Reg. No.: 39,512

Date:

May 20, 2010

Docket Administrator - Room 3D-201
Alcatel-Lucent USA Inc
600-700 Mountain Avenue
Murray Hill, NJ 07974-0636



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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

KRAMER & AMADO, P.C.
1725 Duke Street, Suite 240
Alexandria, VA 22314

Mail Date: 04/21/2010

Applicant	: Jonathan Dean Segel	: DECISION ON REQUEST FOR
Patent Number	: 7590055	: RECALCULATION of PATENT
Issue Date	: 09/15/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/773,226	: OF WYETH
Filed	: 02/09/2004	:
		:

The Patentee's Request for Recalculation is **DISMISSED**.

This Request is deemed ineligible for consideration for one or more of the following reasons:

(A). The patent for which PTA recalculation is requested is either a design or reissue application or is a reexamination proceeding;

(B). The patent for which PTA recalculation is requested resulted from a utility or plant application filed under 35 USC 111(a) before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;

(C). The patent for which PTA recalculation is requested resulted from an international application in which the international filing date was before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;

(D). The patent for which PTA recalculation is requested issued on/after March 2, 2010;

(E). The Request for Recalculation was filed more than 180 days after the grant date of the patent and the request was not filed within two months of a dismissal of a request for reconsideration of the of the patent term under 37 CFR 1.705(d);

(F). The Request for Recalculation is not solely limited to USPTO pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A);

or

(G). A civil action was filed pursuant to 35 U.S.C. 154(b)(4)(A) concerning the same patent at issue in this request.

Patentee may file a reply to this decision dismissing the Request for Recalculation. Patentee must file such reply within one month or thirty days, whichever is longer, of the mail date of the decision dismissing the Request for Recalculation. No fee is required if patentee is asserting in the reply that the dismissal for ineligibility is improper.

Patentee should use document code PET.OP if electronically filing a reply to this dismissal. If the USPTO finds that the request was improperly deemed ineligible, the USPTO will mail applicant a recalculation determination.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A). Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

PTOL-549D (04/10)

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FAX COVER SHEET

RE: OFFICIAL PAPER
TO: U.S. Patent and Trademark Office
FAX: 571-273-8300

FROM: Gregory J. Murgia
Reg. No. 41,209
Alcatel-Lucent USA Inc.

PHONE: (908) 582-7109
FAX: (908) 582-4020

DATE: March 15, 2010
Pages (Incl. Cover): 4

Re: Request For Recalculation Of Patent Term Adjustment In View of
Wyeth*

Case No:	137808-US-NP	Patent No. 7,590,055
Case No:	137856-US-NP	Patent No. 7,590,072
Case No:	137908-US-NP	Patent No. 7,590,053

Certificate of Facsimile Transmission

I hereby certify that this correspondence (and any paper referred to as being transmitted therewith) is being facsimile transmitted to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313, on the date indicated below:

March 15, 2010
Date

Michele M. Potter
MICHELE M. POTTER

PAGE 1/4 * RCVD AT 3/15/2010 12:38:43 PM [Eastern Daylight Time] * SVR:USPTO-EFXXF-5/16 * DNIS:2738300 * CSID:9085824020 * DURATION (mm:ss):00:58

PAGE 5/8 * RCVD AT 5/20/2010 12:22:01 PM [Eastern Daylight Time] * SVR:USPTO-EFXXF-5/3 * DNIS:2738300 * CSID: * DURATION (mm:ss):01:34

03/15/2010 MON 10:15 FAX 613 784 8923

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MAR 15 2010

Doc Code: PET.PTA.RECAL

Document Description: Request for Recalculation in view of Wyeth

Approved for use through 03/28/2011, FORM PTA-0010
 U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE
 Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH

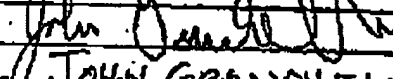
Assignee Checked Number: 137808-US-NP	Patent Number: 7,590,055
Filing Date (or SFA (b) or (f) Date): February 9, 2004	Issue Date: September 15, 2009
First Named Inventor: Jonathan Dean Sage	
Title: High availability broadband connections through switching from wireline to diverse wireless network	

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-WYETH INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

*Wyeth v. Kappos, No. 2008-1120 (Fed. Cir., Jan. 7, 2010).

Signature: 	Date: March 16, 2010
Name (Print/Type): JOHN GRANOWELL	Registration Number: 38,512
<p>NOTE: Signatures of all the inventors or assignors of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.63 and 1.71b. Please see 37 CFR 1.400 for the form of this signature. If necessary, submit multiple forms for more than one signature.</p>	
<input checked="" type="checkbox"/> Total of 1 forms are submitted.	

This information is required to obtain or keep a hearing by the public which is to be held by the USPTO to process an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This disclosure is authorized to take 12 months to complete, including gathering, preparing, and submitting the completed application form to the USPTO. There will be a charge for this service. Any comments on the current or future you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1480, Alexandria, VA 22304-1480. DO NOT SEND PAPER OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1480, Alexandria, VA 22304-1480.

If you need assistance in completing the form, call 1-800-PTO-0199 and select option 2.

137808PAIRPrintServlet.txt
10/773,226 HIGH AVAILABILITY BROADBAND
CONNECTIONS THROUGH
NETWORK SWITCHING FROM WIRELINE TO DIVERSE WIRELESS

05-12-2010::15:55:36

Transaction History

	Date	Transaction Description
	04-21-2010	Mail-Petition Decision - Dismissed
	04-17-2010	Petition Decision - Dismissed
	03-18-2010	Petition Entered
	09-15-2009	Recordation of Patent Grant Mailed
	08-26-2009	Issue Notification Mailed
	09-15-2009	Patent Issue Date Used in PTA
Calculation	08-14-2009	Dispatch to FDC
	08-07-2009	Issue Fee Payment Verified
	08-13-2009	Application Is Considered Ready for
Issue	08-07-2009	Issue Fee Payment Verified
	08-07-2009	Issue Fee Payment Received
	05-14-2009	Mail Notice of Allowance
	05-11-2009	Document Verification
	05-11-2009	Notice of Allowance Data Verification
Completed	03-09-2009	Date Forwarded to Examiner
	02-10-2009	Response after Non-Final Action
	01-27-2009	Mail Non-Final Rejection
	01-21-2009	Non-Final Rejection
	11-14-2008	Date Forwarded to Examiner
	11-05-2008	Response after Non-Final Action
	10-31-2008	Mail Notice of Informal or
Non-Responsive		RCE Amendment
	10-30-2008	Notice of Informal or Non-Responsive
RCE Amendment		
	10-09-2008	Date Forwarded to Examiner
	10-09-2008	Date Forwarded to Examiner
	10-06-2008	Request for Continued Examination
(RCE)		
	10-09-2008	Disposal for a RCE / CPA / R129
	10-06-2008	Workflow - Request for RCE - Begin
	10-06-2008	Case Docketed to Examiner in GAU
	07-09-2008	Mail Final Rejection (PTOL - 326)

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	07-07-2008	Final Rejection
	04-23-2008	Date Forwarded to Examiner
	03-28-2008	Response after Non-Final Action
	02-06-2008	Mail Non-Final Rejection
	02-04-2008	Non-Final Rejection
	11-08-2007	Date Forwarded to Examiner
	10-31-2007	Response after Non-Final Action
	07-31-2007	Mail Non-Final Rejection
	07-18-2007	Non-Final Rejection
considered	06-16-2005	Information Disclosure Statement
	06-04-2007	Case Docketed to Examiner in GAU
	01-18-2007	Case Docketed to Examiner in GAU
	09-25-2006	Miscellaneous Incoming Letter
	03-21-2006	Case Docketed to Examiner in GAU
	02-10-2006	Case Docketed to Examiner in GAU
	07-21-2005	Correspondence Address Change
	06-16-2005	Reference capture on IDS
(IDS) Filed	06-16-2005	Information Disclosure Statement
(IDS) Filed	06-16-2005	Information Disclosure Statement
Complete	07-01-2004	IFW TSS Processing by Tech Center
	07-01-2004	Case Docketed to Examiner in GAU
	05-06-2004	Application Return from OIPE
	05-06-2004	Application Return TO OIPE
	05-06-2004	Application Dispatched from OIPE
	05-07-2004	Application Is Now Complete
	03-17-2004	Cleared by OIPE CSR
	02-19-2004	IFW Scan & PACR Auto Security Review
	02-09-2004	Initial Exam Team nn

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